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Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-76

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Homestead and North Miami Beach,
Florida)

RM-8611

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 24, 1995; Released: December 6, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 10 FCC Rcd 6148 (1995), issued in response to a petition filed by New Age Broadcasting, Inc. ("New Age"), licensee of Station WXDJ(FM), Channel 239C1, Homestead, Florida. The *Notice* proposed the substitution of Channel 239C2 for Channel 239C1 at Homestead and reallocation of Channel 239C2 to North Miami Beach, Florida, and modification of the license for Station WXDJ(FM) accordingly.¹ New Age filed comments reiterating its intention to apply for Channel 239C2 at North Miami Beach, Florida. Informal comments supporting the proposal were filed by Richard Bergman, President of Temple Sinai, North Miami Beach, Raymond F. Marin, Vice Mayor of North Miami Beach and Rachel Tourgeman, Director, Community Relations Board, Dade County, Florida. Reply comments were filed by New Age.

2. In the *Notice*, we stated that we were unable to determine if the reallocation of Channel 239C2 from Homestead, Florida, to North Miami Beach, Florida, would result in a preferential arrangement of allotments. We noted that North Miami Beach is located within the Miami-Hialeah Urbanized Area, as defined by the U.S. Census, and questioned whether North Miami Beach should be credited with all of the services licensed to the urbanized area or whether the reallocation would provide North Miami Beach with its first local aural broadcast service. We requested petitioner to submit any additional information as to the overall public interest benefits that would be advanced from a grant of this proposal. We also requested that the petitioner provide information showing the areas and populations which would lose existing service if Station WXDJ(FM) downgraded to Channel 239C2 and was reallocated to North Miami Beach. We asked that the study indicate the number of reception services which are now available within the gain and loss area.

3. New Age states that a relocated Station WXDJ(FM) will provide an alternative radio voice to 208,668 people (an increase of 8.2% over the population served by WXDJ(FM)'s licensed 60 dBu contour) within the gain area of 113 square kilometers. According to New Age, only 34,037 people (1.3% of the population served by Station WXDJ(FM)) will theoretically lose service, as virtually all the area losing WXDJ(FM)'s licensed service is uninhabited swampland. New Age states that of the 34,036 people losing service, 32,635 will continue to receive five or more radio signals, while 200 people will retain three aural services and 1,201 will still have two aural services. Thus, relocation of Station WXDJ(FM) creates no grey or white areas. Further, Homestead will be abundantly served with reception service from twenty-two radio stations including Station WOIR which is licensed to Homestead. Homestead also receives daytime service from eleven AM stations. New Age contends that the change of community will provide a new service to a larger population and will produce much-needed technical improvements to Station WXDJ(FM) resulting in improved reception of the station's signal in the area.

4. New Age also submitted information to support its claim that North Miami Beach is an independent community deserving of a first local service preference. New Age states that the proposed changes will greatly enhance the public interest by providing North Miami Beach with its first local transmission service and substantially improving Station WXDJ(FM)'s existing radio service. New Age believes that Station WXDJ(FM), which provides Spanish-language programming, could provide a valuable service to North Miami Beach's expanding Hispanic population. New Age further states that although it does intend to relocate its transmitter and downgrade its existing facility from Class C1 to Class C2, which will produce a gain and loss area, the entire loss area is considered to be well served. New Age points out that Homestead, which is part of and interdependent with the Miami-Hialeah Urbanized Area, would continue to be served by Station WOIR, and would continue to receive service from Station WXDJ(FM) as well as twenty-two other reception services. New Age contends that North Miami Beach, incorporated in the mid-1920s, is an independent community from the Miami-Hialeah Urbanized Area with its own local government, which provides essential services for the community, including police, highway repairs and storm drainage, parks and recreation, sanitary sewers, public water, trash collection and city planning and zoning. Equally important, North Miami Beach has excellent public educational facilities which include nine public schools, thirty-four private schools, Southeastern University of Health Science and Florida International University. The City of North Miami Beach operates its own public library. The city has numerous community centers serving the needs of local residents as well as the Parkway Regional Medical Center which is the city's largest employer. North Miami Beach maintains eight recreational parks as well as the Senator Gwen Margolis Amphitheater and the North Miami Beach Cultural Center and sponsors its own North Miami Beach Symphony Orchestra. New Age points out that in 1993, residents approved a \$13 million bond issue for new city facilities to be combined with the city hall complex to

¹ In its petition, New Age indicated Station WXDJ(FM) has been operating from temporary facilities with reduced service

since Hurricane Andrew destroyed its tower in August, 1992.

create a government center. North Miami Beach is home to numerous religious institutions, some of which have recognized the benefits that Station WXDJ(FM), as a local radio voice, could bring to the community. North Miami Beach is a thriving commercial center totally independent of any other area in South Florida for their continuing fiscal well-being. New Age states that a business directory published by North Miami Beach spans more than fifty pages. The North Miami Beach Chamber of Commerce, established in 1949, actively promotes the interests of more than 400 members. Over one dozen businesses are listed in the local telephone directory as incorporating "North Miami Beach" in their trade names. The Metro-Dade Transit Agency has bus routes throughout the city.

5. North Miami Beach lies within the Miami-Hialeah, Florida, Urbanized Area as does Homestead. While the *Notice* requested the petitioner to demonstrate, using the criteria set forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), whether North Miami Beach should be credited with all of the aural services licensed to the Miami-Hialeah Urbanized Area, we clarified in another case that we would not request this type of showing in cases involving moves within the same urbanized area. See *East Los Angeles, Long Beach, and Frazier Park, California*, 10 FCC Rcd 2864 (1995). In the Community of License MO&O, the Commission was concerned about a mechanical application of the FM priority for first local service where a petitioner requested a change of community from outside into an urbanized area. However, those concerns do not exist in cases such as the instant one where a station is already licensed to a community in an urbanized area and seeks to change its community of license to another community in the same urbanized area. In such cases, a first local service preference is not being used as a basis to enter the market. See *East Los Angeles, infra*. In any event, New Age, in response to the *Notice*, provided information showing that North Miami Beach is a community independent of the Miami-Hialeah Urbanized Area and that the stations licensed in the urbanized area should not be credited to North Miami Beach.

6. We next must determine whether the proposal would result in a preferential arrangement of allotments. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Community of License MO&O*"). In determining whether a proposed reallocation represents a preferential arrangement of channels, we apply the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 2d 88, 92 (1982).² Under priority (3), North Miami Beach would be favored for a first local service over Homestead, which would continue to be served by Station WOIR. Homestead also receives service from 22 radio stations. Furthermore, a Commission engineering analysis shows that the proposed reallocation of Channel 239 from Homestead to North Miami Beach will result in a net gain in population served of 89,035 people. There would be a loss area of 2,371 square miles containing 51,107 people, the majority of which are served by five or more full-time services.

7. Based on the information before us, we find that the public interest would be served by substituting Channel 239C2 for Channel 239C1 at Homestead and reallocating the channel from Homestead, Florida, to North Miami Beach, Florida, at petitioner's specified site.³ In accordance with Section 1.420 (g) and (i) of the Commission's Rules, we will modify the license for Station WXDJ(FM) to specify North Miami Beach, Florida, as its community of license on Channel 239C2 in lieu of its use at Homestead, Florida.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **January 22, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Homestead, Florida	---
North Miami Beach, Florida	239C2

9. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WXDJ(FM), Homestead, Florida, IS MODIFIED to specify operation on Channel 239C2 at North Miami Beach, Florida, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, New Age Broadcasting, Inc., licensee of Station WXDJ(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

² The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3)].

³ The coordinates for Channel 239C2 at North Miami Beach are 25-42-55 and 80-09-17. We note that a construction permit for Channel 239C2, Homestead, Florida, at coordinates 25-46-23 and 80-25-21 expires January 3, 1997 (BPH-9401071A).

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau